without giving any particulars of his method. The Stamp Officer gave the appellants a fair and adequate opportunity to adduce further evidence and I do not doubt that he would, if so requested, have given them particulars of the Collector's method. The appellants replied to the effect that they would adduce their evidence in Court but they were never attempted to do so.

The Stamp Officer therefore had to decide the matter on the evidence then before him. He had to choose between two valuations — one by the directly interested party and one by a responsible public official who is independent in the sense that he is in a separate department and makes routine valuations for a variety of purposes. The Stamp Officer chose the latter and the question is whether he was right. Was the evidence sufficient?

A good deal was said about the onus of proof. In the first place the onus was undoubtedly on the parties to the transfer. The Ordinance expressly provides that they may be called upon to prove the facts relating to the instrument. They explained the circumstances and the Stamp Officer replied by adducing the Land Office valuation. That was, in the circumstances, enough to shift the onus back on to the appellants. Their complaint is that unless the amount of duty in question is so very large that the fees of a professional appraiser are small in comparison, the citizen is in the hands of the tax collector; he must either pay what is demanded, though he sincerely believes it to be excessive, or he must incur disproportionate and irrecoverable expense. There is nothing new or anomalous in this. Similar situations arise under all revenue statutes. If the Treasury had to employ outside appraisers on every occasion the costs of collecting the revenue would be enormously increased. The Government provide, at the cost of the public, a Land Office to furnish routine valuations.

In my opinion they have fully complied with the substance of the law. The decision of the Stamp Officer was clearly right on the evidence before him. I think it was sufficient and no further evidence has been adduced. The appeal is therefore dismissed. The appellants must pay the costs but in the circumstances I assess them at the inclusive sum of $100/-, to save taxation.

Appeal dismissed.

NG KEAN TEK v. KAM HOCK LYE.

[Orig. Civ. Juris. (Jobling, J.) August 28, 1950]

[Penang — Civil Suit No. 220 of 1949]

Contract — Sale of rubber to unlicensed dealer — Delivery at future date — Purchaser not in possession of licence required by Rubber Dealers Ordinance, S.S. (Cap. 212) at the time when delivery due.

The plaintiff in this case claimed specific performance of a contract made during the Japanese occupation for the delivery of fifty piculs of rubber within four months after the declaration of peace in Malaya. By the same contract the defendant agreed that in default of tapping and delivering the said rubber he should either purchase the same in the open market or pay to the plaintiff the full market price of fifty piculs of rubber on the expiration of four months from the declaration of peace in Malaya.

The defendant refused to deliver the rubber as agreed on the ground that the contract was invalid in law. The defendant contended that the plaintiff at all material times was not a licensed rubber dealer and therefore the contract was illegal in that the plaintiff could not enter into such contract for the purchase of rubber without a licence. The plaintiff contended that the defendant refused to deliver the rubber without ascertaining whether the plaintiff would obtain a licence before delivery and that therefore the second part of the contract note — the payment of the full market price of the rubber — was enforceable.

Held, that the Court will not order the enforcement of a contract where the enforcement would contravene the criminal law, nor will the Court make an order for payment of damages as this would be damnifying the defendant for not lending himself to the commission of a criminal offence. Action dismissed with costs.

Case referred to :—

(1) *Syn Thong & Co. v. Tong Joo (Hoo) & Co.* (1929) S.S.L.R. 39.

ACTION.

C. D. D. Hogan for the plaintiff.

Ong Huck Lim for the defendant.

Cur. Adv. Vult.

Jobling, J. : — This is a claim for specific performance of a contract for the delivery of rubber sold by defendant to plaintiff.

It is admitted that the parties entered into an agreement for the sale and purchase of fifty piculs of rubber and that the defendant received the full purchase price thereof and executed the following contract note :—

"This is to confirm that I have this 14th day of August 2605 sold fifty (50) piculs of rubber (smoked sheet 2nd and 3rd grade) to Ng Kean Tek of No. 360 Beach Street, Penang.

I have received the full market price for the same. I shall deliver the rubber within four (4) months after the declaration of peace in Malaya. The rubber is to be tapped from my rubber estate at Belik Pulau, Lots 15, 16[1], 16[2] Mukim 7 and Lot 537 Mukim 9, S.W.D., Penang.

If I fail to tap the rubber, I have to either purchase same from the open market or pay him the full market price as on the expiration of four (4) months from the declaration of peace in Malaya."

It was also not disputed that the rubber was not delivered as agreed and that on demand being made by plaintiff for delivery defendant refused on the ground that the agreement was invalid.

The plaintiff does not possess and has never possessed a licence to purchase rubber as required by the Rubber Dealers Ordinance, Cap. 212.

The only question in this matter is whether the contract is enforceable. Mr. Ong Huck Lim for the defendant submitted that the contract was illegal and unenforceable because the plaintiff was not licensed to purchase rubber. Mr. Hogan for the plaintiff contended that the defendant refused to deliver the rubber without ascertaining whether the plaintiff would obtain a licence before delivery and that therefore the second part of the contract note — the payment of the full market price of the rubber — was enforceable.

Both counsel referred to the judgment in *Syn Thong & Co. v. Tong Jco (Hoo) & Co.*[1] supporting their respective arguments. That case laid down that a licence under the Rubber Dealers Ordinance, Cap. 212 for the purchase of rubber is necessary when the purchaser takes delivery but not before. It is clear then that the contract was not illegal when entered into and the only question is whether in the existing circumstances particularly as the plaintiff is not licensed to enable him to take delivery, this Court should order the contract to be carried into effect.

The contract is quite plainly a contract for the delivery of rubber with the alternative that in default of delivery damages are to be paid to the amount of the market price of the rubber. In my view the contract is indivisible and if enforced the order must be for the delivery of the rubber and in default of delivery payment of the damages agreed upon.

It is abundantly clear that the Court could not order the enforcement of a contract where the enforcement would contravene the criminal law. It is equally clear that the Court could not, as suggested by Mr. Hogan, merely make an order for payment of damages as this would be damnifying the defendant for not lending himself to the commission of a criminal offence.

The plaintiff is not licensed to take delivery of the rubber; for him to do so would infringe the criminal law. The plaintiff's claim must be rejected.

Action dismissed with costs.

Judgment for the defendant.

NG SEE HEM v. LIM AH HOOI

[Court of Appeal (Pretheroe, Ag. C.J., Thomson and Russell, JJ.) September 26, 1950]

[F.M. — Civil Appeal No. 12 of 1950]

Appeal — Appeal on question of fact — Credibility of witnesses — Whether plaintiff can call defendant as his own witness — Evidence Ordinance, 1950. s. 114.

This was a claim on a promissory note. The plaintiff (respondent) alleged that he handed $60,000 to the first defendant (appellant) for safe custody and that the two defendants signed the promissory note. The second defendant admitted the debt and judgment was obtained against him. The first defendant (appellant) denied that he had ever executed the promissory note and pleaded that the promissory note was a forgery. He also denied that the plaintiff (respondent) had ever handed him the sum of $60,000. When the case came on for trial, the second defendant was present in Court but was not called as a witness for either side. Judgment was given for the plaintiff (respondent) and the first defendant (appellant) appealed.

Held, (1) that the issue in this case was one of fact and as the learned trial Judge had based his decision on the opinion he formed as to the comparative reliability of the witnesses, the appellate Court could not interfere; (2) that although the plaintiff at the trial could have called the second defendant as his witness, his failure to do so could not raise any presumption under section 114 of the Evidence Ordinance, 1950, as the second defendant had admitted his joint liability.

Cases referred to:—

(1) *Watt (or Thomas) v. Thomas* (1947) 1 All E.R. 582 at page 583.

(2) *Price v. Manning* 42 Ch. D. 372.

CIVIL APPEAL.

E. D. Shearn (*M. S. Mahendran* with him) for the appellant.

S. M. Sharma for the respondent.

The facts and arguments sufficiently appear from the Judgment.

Cur. Adv. Vult.

Pretheroe, Ag. C.J. : — In this suit plaintiff alleged that he handed $60,000 to the first defendant for safe custody, as he was afraid that if the secret Ang Bin Hoay Society came to know he had this capital in hand it would have demanded a heavy contribution from him. He alleged that the defendants went to him together; that he had known the second defendant for ten years but did not know the relationship between the two defendants; that the two defendants signed the promissory note and that nobody else was present when the promissory note was signed. Second defendant admitted the debt and plaintiff obtained judgment against him. The first defendant, however, denied that he had ever executed the promissory note and, in his statement of defence, pleaded that the promissory note attached to the plaint "is a forgery". He also denied that the plaintiff had ever handed him the sum